

Answers to Questions about Proposed King County Ordinance 2000-0036
Raised at the February 16, 2000 Public Meeting

1. **Although the emphasis of this ordinance is on railbanked corridors, the language it contains would allow the county to require special use permits for "any use of county property". To what extent does the county intend to apply this ordinance? What uses? What properties?**
 - The fees and liability associated with this ordinance will be applied consistently to address private uses on all park property County wide, as applicable. Sections of the proposed amended legislation, which specifically address railbanked corridors, would only apply to railbanked corridors. The existing King County trails acquired through railbanking are the Cedar River Trail, a portion of the Snoqualmie Valley Trail and the East Lake Sammamish Trail corridor.
2. **The county's own title search of the East Lake Sammamish rail corridor purchase showed that the county for the most part acquired a surface easement over private property. Considering this, on what does the county base its claim of ownership of the right of way and its right to require special use permits and charge fees?**
 - The first part of this question is incorrect. As quantified by acreage, King County acquired approximately 80% of the corridor in fee, and the remainder in easements. King County purchased what Burlington Northern owned. The 73 title reports prepared for King County merely verified that Burlington Northern owned a continuous, unbroken rail corridor along East Lake Sammamish.
 - The railroad originally acquired the corridor via federal land grants, deeds, right of way deeds, warranty deeds, quitclaim deeds, and adverse possession.
 - King County purchased all of the property rights which formerly belonged to Burlington Northern Railroad for 11.61 continuous miles along the East Lake Sammamish rail corridor.
 - Some ELS property owners dispute King County's fee title on certain parcels. They assert they own the fee interest and the County only obtained an easement. Therefore, they argue, the County may not build the trail adjacent to their homes. This is also incorrect.
 - In 1998, the Surface Transportation Board approved the ELS corridor for railbanking. By this ruling, the entire corridor is railbanked -- preserved for future rail use. This ruling gave King County the right to use and develop the corridor for a recreational trail until needed for rail service. King County also bears the responsibility of preserving the corridor for future rail use.
 - Railbanking is a process which preserves rail corridors for future railroad use. Federal railbanking law allows the transfer of ownership of rail corridors to municipalities and non-profit organizations for interim trail use. The receiving entity accepts the property interest of the railroad. Federal law recognizes that America's rail corridors are an irreplaceable national asset.
 - Because the entire East Lake Sammamish corridor is railbanked, the County has the right to build develop, construct, and operate a recreational trail and related amenities on both the easement and fee interest portions of the corridor. This means it is not necessary to determine whether the County owns a particular parcel in fee or as an easement prior to constructing the trail.
 - Ownership issues are relevant when an adjacent property owner seeks to use the railbanked corridor for private purposes. Where the County has an easement only, it will not charge a use fee to the underlying fee owner for approved private uses of the corridor.

3. **In the ordinance, the word "owned" has been removed from the phrase, "county owned property". (E.g., Section 2 para. B,) Why? Is it the intent of this ordinance to circumvent the ownership issue?**
- The County intends to insure that private uses of the corridor do not interfere with the County's right to build develop, construct, and operate a recreational trail and related amenities. Further, the County intends to comply with Federal railbanking law by preserving the corridor for future rail use.
 - The County will review proposed private uses of the corridor through its permit process. The County will not charge a use fee to the underlying fee owner in easement areas.
4. **The ordinance states that permit applicants may be required to deed property to the county "when necessary to fulfill any county policy, ordinance or laws"(emphasis added). Would this not give the county the power to extort land in the name of "county policy"?**
- This provision has been in affect since 1982 and, to the best of our knowledge, has never been applied. We believe it should be deleted, and will so recommend to the Council.
5. **It has been stated that this crossing ordinance is just the first of a series of ordinances pertaining to "private use of county lands". What is to follow?**
- The proposed property interest ordinance is the first step in amending the King County Code, which was adopted in 1982. These proposed changes have been developed in response to citizen concerns. King County understood that the top concerns of citizens were the permit fees charged by King County, and securing continued access to their properties. King County wanted to address these issues immediately, and thus developed the proposed recommendations. Additionally, King County recognizes that citizens are also concerned about County fees associated with other private uses of public land. Currently, policy discussions are occurring regarding these issues, and proposed recommendations will be forthcoming.
6. **Since the SEPA process requires consideration of all impacts including economic, why is the county in a rush to assess fees now and not complete the SEPA first? What's the hurry?**
- Fees are not an issue that SEPA addresses.
7. **No one currently pays fees to cross other county right of ways, like sidewalks, to get to their property. Will that change because of this ordinance? If not, why should residents be charged to cross this particular kind of right of way to get to their houses?**
- There are generally no use fees charged for driveway crossings of sidewalks and road rights-of-way. These types of uses are governed by separate laws and regulations, with a driveway being considered an integral part of a transportation system.
 - The County Executive's proposed legislation would eliminate all fees for driveway crossings that were used prior to County ownership of the corridor, and limit fees for administrative processing charges to no more than \$150 for new crossings or new users of crossings. All use fees for qualified crossings would be waived under the proposed legislation. Based on public comments, we are also considering

a change which would allow assignment of permitted uses to new property owners at no additional cost.

8. Why should members of the public be allowed to run for miles down the proposed trail for free while the property owner is made to pay for the right to cross the trail from one side of his property to the other?

- Everyone may use King County trails. When we evaluate private use of public land, there is a special dedicated use that is being approved to an individual property owner and not the public as a whole. Because the public does not receive the same special dedicated use, a fee may be associated with the private use of public land, and a special use permit is required.
- It should be noted that historical crossings on railbanked corridors will not be assessed any fee for issuance of a special use permit under the proposed changes to the ordinance.

9. Why does the ordinance treat new owners differently from existing owners?

- The general idea behind the proposed ordinance was to acknowledge those neighbors who had dealt with the railroad and received permission for their private crossings on the corridor. The proposed ordinance reflects an approach used by the State of Washington in which those historic uses are easily acknowledged at no cost to the users. Several persons have suggested that permitted uses be attached to properties thereby allowing automatic assignments to new users of existing crossings. We are considering this suggestion.

10. The ordinance states that the permittee "shall assume liability for all injuries to persons or property as the result of activities conducted pursuant to a special use permit." Why does the ordinance place liability on the private property owner for public use of the corridor? Why shouldn't the county instead insure the homeowner against risk due to the public crossing driveways, trespassing on beaches, etc.?

- The indemnification language in the ordinance is required in all permits and is quite similar to the indemnification language included in many of the railroad permits. Basically, it says that if your private use, including any improvements you have made within the corridor, cause damage to another party, the County will not be liable for those damages.
- Even under the railroad ownership, there were many unauthorized activities taking place within the railroad corridor. Encroachment of the corridor was an issue then as it is now. Even though there will now be many authorized users on the trail, they will be using the trail within established guidelines and directions. The County will post use rules along the trail, place appropriate restrictive signs at various locations, use fencing when appropriate, consider other routes in the trail planning process, and routinely monitor activities on the trail. All of these actions will help reduce the potential for trespass on adjacent private properties.

11. Has the county determined whether it will even be possible for homeowners to obtain affordable insurance indemnifying the county for risk to the public?

- From a practical perspective, homeowners insurance and liability insurance are a private matter. Adjoining land owners should consult with their insurance agents and legal advisors to address risk issues.

12. Will the fees and liability dictates of this ordinance simultaneously be applied to the Burke Gilman Trail, Sammamish River Trail, and all similar facilities?

- The fees and liability associated with this ordinance will be applied consistently to address private uses on all park property County wide, as applicable. Sections of the proposed amended legislation which specifically address railbanked corridors will only apply to railbanked corridors. The existing King County trails acquired through railbanking are the Cedar River Trail, a portion of the Snoqualmie Valley Trail and the East Lake Sammamish Trail corridor.

13. This ordinance would authorize charging "fair market compensation" for private uses of county property. What fees will be charged for what uses? Are we not, in fact, back to the situation of a few months ago where the county was attempting to charge residents thousands of dollars to continue historical uses of the right of way?

- The proposed ordinance eliminates use fees for all essential crossings. Essential crossings are defined as surface or underground facilities which provide access to individual households, family farms, or recreational properties.
- The proposed ordinance does not eliminate use fees for other private uses of the corridor. However, the proposed ordinance encourages the County to consider mutual and offsetting benefits of private uses rather than requiring cash payment for use fees. Landscaping is the best example of this type of arrangement. Landscaping, if prepared appropriately, is of significant benefit to both the County and users of the trail. Privately installed and maintained landscaping reduces the trail development and maintenance costs of the County, enhances views for trail users, and provides natural barriers to unauthorized use of the trail corridor. These benefits to the County could offset any use charges associated with the special use permit.
- Based on comments from the public, the County is currently going through a policy discussion on use fees for non-crossing private uses of these corridors. These discussions may lead to new legislation addressing those use fees.
- Regardless of the outcome of these policy discussions, the Property Services Division has also refined its methodology for calculating the value associated with private use of these types of corridors. The earlier assessment of use fees did not recognize the unique nature of the linear parks such as trails, and did not recognize the reduced value of this corridor caused by the rail reversionary requirements tied to the land. The Property Services Division will now acknowledge that private uses of the corridor that occur more than 15 feet from the trail center line have less of an impact on public uses and therefore warrant lower use fees. Furthermore, use fees for railbanked corridors will be discounted to account for the reversion requirements of those corridors. Based on comments from the public, the Division is also considering going to a valuation basis which will consider the past appraised value of the trail corridor as a better means for determining value. This will result in significantly lowered use fees because currently value is determined on a case by case basis by averaging the value of immediately adjoining properties.

14. Is the crossing itself considered an improvement for purposes of determining liability indemnification?

- Determination of liability absent specific circumstances and facts to assess is not quantifiable. However, the portions of a driveway which are located within the corridor but not on the trail itself would be considered improvements.

15. Why will homeowners be liable for what happens on this public trail?

- Homeowners are not expected to be liable for what happens on this public trail unless their actions or their private use improvements create a liability.